IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/04/2004

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR. JUSTICE D.MURUGESAN

W.P. NO. 645 OF 2004
AND W.P.NOS., 646, 2001, 2501, 3939, 3937, 3121, 3122, 3549, 3550,
8589, 4198, 4022, 4720, 4205, 3929, 6072, 4209, 7042, 7179, 7180,
80 93, 5512, 2608 TO 2610, 3321, 1144, 6635, 7062, 7045, 5657, 5956, 10752,
10090, 10089, 3620, 3621, 5018, 4199, 5864 & 3167 OF 2004
W.A. NOS. 1185 AND 1186 OF 2004
AND
W.P.M.P. NOS. 4652, 4648, 4649, 7128, 4952, 6410, 670, 672, 3656, 3657,
3659, 3660, 4742, 4743, 4170, 4171, 4174, 8344, 8476, 8477, 9538, 8306,
6610, 4268, 4270, 6852, 4960, 4940, 6971, 2838, 3834, 4951, 5541, 5542,
2996, 2998, 3000, 3894, 3895, 1185, 8309, 4635, 4636 & 3698 OF 2004
W.A.M.P. NOS. 2235 TO 2237 OF 2004

W.P. NO. 645 OF 2004

Jeppiar Engineering College
established by Jeppiar Educational
Trust & rep. by its Chairman
Jeppiar Nagar, Old Mahabalipuram
Chennai - 19. .. Petitioner

-Vs-

1. The State of Tamil Nadu
rep. by its Secretary
Higher Education (J1) Department
Fort St. George
Chennai 600 009.

2. All India Council for Technical
Education (AICTE)
rep. by its Chairman
Indira Gandhi Sports Complex
I.P. Estate
New Delhi 110 002. .. Respondent

W.A. NOS. 1185 & 1186 OF 2004

All India Council for Technical
Education (AICTE)

rep. by its Member Secretary
Indira Gandhi Sports Complex
I.P. Estate
New Delhi 110 002. .. Appellants in both WAs

- Vs -

1. The State of Tamil Nadu
rep. by Secretary to Govt.
Higher Education Department
Fort St. George
Chennai 600 009. .. R1 in both WAs

2. Jeppiaar Engineering College
established by Jeppiaar Educational Trust and
rep. by its Chairman
Jeppiaar Nagar
Chennai 600 019. .. R2 in WA No.1185/04

3. St. Joseph's College of Engineering
established by Jeppiaar Educational
Trust and rep. by its
Chairman, Jeppiaar Nagar
Chennai 600 019. .. R2 in WA No.1186/04

W.P. No.645 of 2004 filed under Article 226 of The Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus as stated therein.
W.A. Nos.1185 & 1186 of 2004 preferred against the order made in W.P.M.P. Nos.670 & 672 of 2004 in W.P. Nos.645 and 646 of 2004 dated 11.2.2004, as stated therein.

!For Petitioners : Mr. R.Krishnamurthy, SC
for Mr. V.Ayyathurai
Mr. K.Duraisami, SC, for
M/s. Muthumani Doraisami
Mr. R.Natarajan
Ms. B.Saraswathi
Mr.S.Mothilal
Mr. R. Suresh Kumar
Mr. C.Selvaraju
Mr. K.Selvaraj
Mr. Satish Parasaran
Mr. N.Paul Vasanthakumar

For Appellant : Mr. Vijay Narayan

^For Respondents in WA : Mr. N.R.Chandran, AG, assisted by

Mr. V.R.Rajasekaran, Spl.G.P. (Edn.)
for R1 in both appeals
Mr. R.Krishnamurthy, SC, for
Mr. V.Ayyathurai, for R2 in both Was

For Respondents in WP : Mr. N.R.Chandran, AG, assisted by
Mr. V.R.Rajasekaran, Spl.G.P. (Edn.)
Mr. Vijay Narayan

:ORDER
(ORDER OF THE COURT WAS MADE BY D.MURUGESAN, J.)
The issue raised in all these writ petitions is one and the same and, therefore, they are disposed of by this common order. For the disposal of the writ petitions, we refer to the facts relating to W.P. No.2001 of 2004.

2. Before considering the facts of that case, it would be appropriate for us to refer to the provisions relating to the grant of approval by the All India Council for Technical Education, shortly known as AICTE, for the course covered under the provisions of AICTE Act, 1987. In order to ensure co-ordinated development of technical education in accordance with the approved standards and allied objects, the said Act was brought in conferring power on the council established under Section 3 of the said Act. The power to grant approval vests with the council under Section 10 of the Act. Before granting approval, the council insisted the grant of No Objection Certificate (for short "NOC") from the State Government as per Regulation 8 (4)(e). From paragraph-6 of the notification calling applications for introduction of additional course, for increase in intake in the existing institutions, as per the national calendar for the academic year 2004-05, " the application not recommended by the State Government shall not be processed by the council. The no objection certificate of the State Government should be received within

the cut-off date (31.12.03). In case the NOC is not received from the State Government by the cut-off date, AICTE shall consider the application for further processing".

3. For the disposal of the writ petitions we are not inclined to go into the power of the State Government to grant no objection certificate, as according to the petitioners they are not required to obtain NOC from the State Government as insisted under Regulation 8 (4)(e), as the said regulation came to be challenged before this Court and a batch of appeals are still pending.

4. Coming to the facts of this case, the petitioner/college, which is already established and imparting education in some technical courses, pursuant to the notification, applied on 28.10.03 for following additional undergraduate courses, namely, Mechanical Engineering, Electrical Engineering and post-graduate courses in Master of Computer Applications and Master of Business Administration. The said application was rejected by the first respondent by the impugned order dated 3 0.12.03. As the orders rejecting the request for starting new courses/increase in intake in the existing courses are stereo-typed, the said order is extracted as under :-

"Higher Education (J1) Department
Letter No.15442/J1/2003-3, dated 30.12.2003
From
Leena Nair, I.A.S.
Secretary to Government

To
S.S.S. College of Technology
Sathy Road, Vizhiyampalayam Kalapatty Post
Coimbatore 641 035.

Sir,

Sub : Higher Education - Issue of No Objection Certificate for starting additional courses/increase in intake in the existing institutions for the year 2003-2004/2004-2005 - Reg.

Ref : Your application to the AICTE and copy sent to the Government.

The Government considered the matter with reference to granting of No Objection Certificate for starting new courses/increase in intake in the existing courses, in the existing institutions for year 2003-20 04/2004-2005.

2) For the reasons that large number of seats remained vacant during the last few years, affecting the vary viability of the colleges and the quality of courses, the Government has decided not to grant No Objection Certificate for starting new institutions during the year 20 03-2004 and 2004-2005. It was opined that the effect of starting additional courses or increasing the intake in the existing institutions will be the same as in the case of new institutions because in both these cases the overall total intake in the institutions will be pushed up which will ultimately increase the vacant seats, adversely affecting the viability of the colleges and also the quality of the courses. It was therefore felt that for starting additional courses or increasing the intake in the existing courses will ultimately result in the overall capacity increase of the institutions in the State and hence No Objection Certificate for such activities need not be granted. The Government has therefore decided not to grant No Objection Certificate for starting additional courses or for increasing the total intake in the existing courses for the year 2003-2004/2004-2005.

3) In consonance with the above policy decision of the Government, I am directed to state that your request for the grant of No Objection Certificate for starting of additional courses/for increasing the intake in the existing courses is not feasible of compliance.
Yours faithfully,

for Secretary to Government"

5. Mr. R.Krishnamurthy, learned senior counsel and Mr.K.Duraisami, learned senior counsel leading the arguments for the petitioners would submit that without prejudice to their right to question the very power of the State

Government to consider the applications for grant of NOC, as the very Regulation 8 (4)(e) of AICTE Regulation empowering the State Government to grant NOC is under challenge, the State Government is obligated to consider the individual requests of each of the applicants with reference to their claim, namely, either for additional course or for increase in intake, but a stereo-typed order has been passed solely on the basis of a policy decision of the government in deciding not to grant no objection certificate as the increase in intake in the existing courses will ultimately result in the overall capacity increase of the institutions in the State. Hence, the learned senior counsel would submit that the power vested in the State Government was not properly exercised in terms of Regulation 8 (4)(e).

5. We have heard the learned Advocate General for the respondents on this issue. When this Court expressed the view as to the mechanical manner in which the applications were considered and disposed of without application of mind to the individual facts and circumstances of the case, the learned Advocate General fairly submitted that the State Government may be given liberty to consider each of the application and pass orders on the NOC depending upon the merits of the case.

6. We have carefully considered the above submissions. In terms of paragraph-6 of the notification calling for applications for introduction of additional course/increase in intake in the existing institutions issued by the AICTE, the AICTE shall not process the application, if not recommended by the State Government by grant of NOC on or before 31.12.2003. This notification was issued on 19.9.03. The writ petitioner submitted his application on 28.10.03. We are informed that almost all the petitioners have submitted their applications prior to the end of October 2003. The State Government, which is obligated to consider those applications, had kept quiet till the cut-off date, namely, 31.12.03 and did not pass any orders. Mr.Vijay Narayan, learned counsel appearing for AICTE would submit that the impugned orders in all the writ petitions dated 31.12.03 were received by the AICTE as a bunch on 31.12.03 only. This fact would reveal that the State Government was pre-determined to reject the applications and served them on AICTE on the last date as in the event the order of rejection was not received by the AICTE on or before 31.12.03, the AICTE would be entitled to consider the request of the individual applicants for either establishment of a new college/course or additional intake without reference to the no objection certificate.

7. The orders of rejection were passed on the same day in respect of request of all the writ petitioners, which by themselves would show that the respondents did not apply their mind to specific request of individual institutions with reference to the additional courses, for increase in the intake or for the establishment of a new college or course, etc. Moreover, by the powers conferred on the State Government under Regulation 8 (4)(e), the request for increase in intake or establishment of a new course cannot be rejected on the ground that the Government has taken a policy decision not to allow any such additional intake or additional course, which would in turn amount to increase in the overall capacity.

8. The impugned orders in all these writ petitions are liable to be

set aside on the ground that they are stereo-typed orders passed without application of mind to the specific request of each of the individual applicants for grant of NOC either for increase in intake or establishment of a new college or additional course, etc. For the said reason, we are inclined to set aside the impugned orders in all the writ petitions.

9. Accordingly, the impugned orders in all the writ petitions are set aside. The writ petitions are allowed. Consequently, connected miscellaneous petitions are closed. The first respondent is directed to consider application submitted by the individual writ petitioners with specific requests and pass orders after considering the individual merits without reference to the policy decision not to grant NOC. For this course the learned Advocate General has no serious objection. The first respondent is directed to dispose of the application of the writ petitioners and pass orders for grant of NOC for the academic year 2004-05 on or before 5.5.04 positively and forward the the same to AICTE before the said date. In the event the orders are not passed as directed above, it is open to AICTE to consider the request of each of the writ petitioners for the increase in intake or for additional courses, etc., and process the applications further on merits. In such event, AICTE shall process and dispose of the applications of the writ petitioners on or before 5.6.04 so as to enable the institutions to admit the students or to start the new course or college in the event of AICTE granting permission.

10. W.A. Nos.1185 and 1186 of 2004 arise out of an interim order in W.P. Nos.645 and 646 of 2004, which we have disposed of in the above batch of writ petitions. In view of the above order, no further orders are necessary in these writ appeals. Accordingly, these writ appeals are closed as unnecessary. Consequently, connected miscellaneous petitions are closed.

Index : Yes
Internet : Yes

GLN

To
1. The State of Tamil Nadu
rep. by its Secretary
Higher Education (J1) Department
Fort St. George
Chennai 600 009.

2. The Chairman
All India Council for Technical
Education (AICTE)
Indira Gandhi Sports Complex
I.P. Estate
New Delhi 110 002.